Supreme Court, U.S.
FILED
OCT 12 2006
OFFICE OF THE CLERK

No. 06-520

In The
Supreme Court of the United States

OSCAR STILLEY,

Petitioner,

vs.

JAMES MARSCHEWSKI, in his official capacity as Sebastian County Circuit Judge, and in his individual capacity; JAMES M. "MITCH" LLEWELLYN, JR.; BENNY GOODEN; FORT SMITH PUBLIC SCHOOL DISTRICT; JEANNIE COLE, RICK HITTNER, ANN DAWSON, BARBARA HATHCOCK, WYMAN WADE, AND YVONNE KEATON-MARTIN, each in their official capacity as members of the Fort Smith School Board and in their individual capacities; UNIVERSITY OF ARKANSAS at FORT SMITH; ROBERT BROWN, TOM GLAZE, RAY THORNTON, DONALD L. CORBIN, ANNABELLE CLINTON IMBER, and JIM HANNAH, each in their individual capacity and in their official capacity as a justice of the Arkansas Supreme Court,

Respondents.

On Petition For A Writ Of Certiorari To The Eighth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

OSCAR STILLEY, ATTORNEY AT LAW
701 S. 21st Street
Fort Smith, AR 72901
(479) 573.0726 phone
(479) 573.0647 fax
oscar@oscarstilley.com email
Arkansas Bar # 91096

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1) Is due process denied when a court of appeals enters an unpublished per curiam opinion which fails to address or even acknowledge the majority of the arguments of Petitioner, where the first argument on appeal involves a matter of first impression?

2) Is due process denied when sanctions are imposed sua sponte without notice and opportunity to defend?

3) Is there a right to "safe harbor" under Rule 11 when the motion to dismiss the challenged pleading did not specify whether the dismissal was to be with or without prejudice, when the proposed dismissal did not specify whether the dismissal should be "with prejudice" and where the District Court specifically dismissed the claim "without prejudice?"

PARTIES TO THE PROCEEDING

The caption contains the names of all parties in the case below.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
1) Is due process denied when a court of appeals enters an unpublished per curiam opinion which fails to address or even acknowledge the majority of the arguments of Petitioner, where the first argument on appeal involves a matter of first impression?	4
A. The Eighth Circuit violated its own rules in disposing of issues of first impression in an unpublished per curiam opinion	4
B. Petitioner demonstrated that the District Court made a clear error of law in ruling that res judicata barred Petitioner's complaint	7
C. A complaint cannot be judicially barred by *Rooker-Feldman* where the litigant had no opportunity to litigate the issues before a "competent" court	8
2) Is due process denied when sanctions are imposed sua sponte without notice and opportunity to defend?	11

TABLE OF CONTENTS – Continued

Page

3) Is there a right to "safe harbor" under Rule 11 when the motion to dismiss the challenged pleading did not specify whether the dismissal was to be with or without prejudice, when the proposed dismissal did not specify whether the dismissal should be "with prejudice" and where the District Court specifically dismissed the claim "without prejudice?" 13

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

Chambers v. NASCO, Inc., 501 U.S. 32 (1991) 12

City of Jacksonville v. Venhaus, Judge, 302 Ark. 204 (1990) 10

Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532 (1985) 6

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) 5

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 8, 10

Gibson v. Berryhill, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973) 9

Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975) 9

In Re Clark, 223 F.3d 859 (8th Cir. 2000) 12

Jensen v. Federal Land Bank of Omaha, 882 F.2d 340 (8th Cir. 1989) 12

LaChance v. Erickson, 522 U.S. 262 (1998) 6, 7

Lemonds v. St. Louis County, 222 F.3d 488 (8th Cir. 2000) 8

Long v. Shorebank Dev. Corp., 182 F.3d 548 (7th Cir. 1999) 8

Miller v. Bittner, 985 F.2d 935 (8th Cir. 1993) 14

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 8, 10

Westbrook v. State, 265 Ark. 736, 580 S.W.2d 702 (1979) 10

TABLE OF AUTHORITIES – Continued

Page

Wood v. Orange County, 715 F.2d 1543 (11th Cir. 1983) 8

Yamaha Motor Corp., U.S.A. v. Riney, 21 F.3d 793 (8th Cir. 1994) 8, 9

STATUTES AND RULES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 1

UNITED STATES CONSTITUTION

United States Constitution, Amendment 5 .....2, 4, 14

United States Constitution, Amendment 14 .....2, 4, 14

PETITION FOR WRIT OF CERTIORARI

Petitioner Oscar Stilley respectfully requests that a writ of certiorari be issued to review the judgment of the Eighth Circuit Court in this case.

OPINIONS BELOW

The May 18, 2005 opinion and order of the U.S. District Court for the Western District of Arkansas, dismissing Petitioner's complaint and granting Respondents' Rule 11 Motion, is reproduced at App. 1. The July 8, 2005 order of the U.S. District Court for the Western District of Arkansas, awarding costs and clarifying court imposed sanctions, is reproduced at App. 2. Notice of appeal was filed June 13, 2005 and the amended notice of appeal was filed on July 15, 2005, which made the opening brief at the Eighth Circuit due on the 13th day of September, 2005. The District Court's opinion was affirmed in an unpublished per curiam decision dated May 26, 2006, reproduced at App. 3. A timely petition for rehearing, rehearing en banc, and panel rehearing was filed, which was denied at the direction of the Court on July 14, 2006, reproduced at App. 4.

STATEMENT OF JURISDICTION

Jurisdiction to appeal from the District Court to the Eighth Circuit Court of Appeals is found in 28 U.S.C. § 1291, for appeal from a final decision of the United States District Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), for a petition for writ of certiorari to the Eighth Circuit Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution Amendment 5, providing that "No person shall . . . be deprived of life, liberty, or property without due process of law . . . "

US Constitution Amendment 14, providing that "Nor shall any state deprive any person of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

Petitioner Oscar Stilley brought an action against Sebastian County Circuit Judge James Marschewski and others for violations of his civil rights, denial of a competent court, collection of a debt in violation of due process and various federal and state laws, and violation of the federal RICO Act, 18 U.S.C. § 1961-1968.

All Respondent defendants moved to dismiss. Respondent University of Arkansas at Fort Smith served a Rule 11 sanctions motion. Less than 21 days later, Petitioner moved to dismiss UAFS for purposes of "safe harbor" under Rule 11.

The District Court granted the motions to dismiss, found that the attempt at safe harbor failed because the motion to dismiss UAFS did not specify a dismissal "with prejudice" (even though UAFS' own motion did not specify "with prejudice" and the District Court's dismissal was expressly made "without prejudice." The District Court sua sponte ruled that the RICO claim was frivolous, without substantively addressing the claims made, and struck the RICO claim as a sanction. The District Court

claimed that "Plaintiff has raised and lost the issue of the illegality of these taxes not once but several times." However, in Exhibit "1" to the District Court's order, an order in the case of *Jones, et al. v. Double "D" Properties, Inc., et al.*, the District Court stated that he " . . . does not offer any opinion on the . . . applicability of res judicata and or collateral estoppel." **(Appendix at 48)** There is no order or judgment in which a court rendered an opinion on the merits and found the challenged taxes to be legal.

The District Court also imposed other sanctions sua sponte. The District Court refused to identify the specific acts or conduct thought to justify this action, despite a specific and acknowledged request for same.

Petitioner raised four issues on appeal. The Eighth Circuit summarily affirmed the appeal in an unpublished per curiam opinion. The appellate court did not address, even in the most perfunctory way, the arguments of Petitioner to the effect that the complaint was actually meritorious. The Eighth Circuit refused to meaningfully address the acknowledged arguments, suggesting that Petitioner had mischaracterized the record without saying what was considered a mischaracterization.

Petitioner filed a petition for rehearing, which was denied by order entered July 14, 2006 at the direction of the Court. This petition for writ of certiorari followed.



REASONS FOR GRANTING THE WRIT

1) Is due process denied when a court of appeals enters an unpublished per curiam opinion which fails to address or even acknowledge the majority of the arguments of Petitioner, where the first argument on appeal involves a matter of first impression?

A. The Eighth Circuit violated its own rules in disposing of issues of first impression in an unpublished per curiam opinion.

United States Supreme Court Rule 10 in listing the reasons persuasive for the grant of the writ of certiorari, " . . . a United States court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power . . . " Certainly this Court's time is at a premium and should be used judiciously. However, in the present case Petitioner has been deprived of meaningful appellate consideration of his constitutional and other claims, in violation of the 5th and 14th Amendment guarantees of due process, as well as the case law interpreting those provisions. Petitioner would most respectfully request the least amount of this Court's time necessary to ensure that Petitioner is able to obtain meaningful appellate consideration of his arguments presented to the Eighth Circuit.

Petitioner brought litigation against various parties. The litigation was dismissed, partly on motion of the Petitioner and partly on motion of the Respondents, without prejudice to refiling. Petitioner was also sanctioned in the amount of $4,125, prohibited from filing new cases in the Eastern and Western Districts of Arkansas until the monetary sanction was paid, and required to

obtain pre-approval before filing a complaint against certain individuals or entities. Petitioner filed notice of appeal of the sanctions only.

The appeal brief raised four points on appeal, and included 13,712 words of countable text, almost the 14,000 word limit. The Eighth Circuit issued an unpublished per curiam opinion which included a total of 154 words. The petition for rehearing was summarily denied.

The last two points on appeal were directed toward proving that the litigation at District Court was factually and legally meritorious. The Eighth Circuit per curiam opinion did not give the reader so much as a hint that such arguments were made. The Eighth Circuit, after a one sentence description of the case, said:

> We find no abuse of discretion in the imposition of Rule 11 sanctions. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). We are troubled by Stilley's mischaracterization of the record as to the applicability of Rule 11's safe-harbor provision and Rule 11(c)(1)(B). We reject Stilley's argument that the limitations the district court imposed on his practice constitute attorney discipline, as opposed to Rule 11 sanctions. **(Appendix at 2)**

This was the whole of the attempt to substantively address the arguments made. The reader is left to guess the nature of the claims as to the applicability of the safe-harbor provision, and the requirements of Rule 11(c)(1)(B).

Petitioner respectfully submits that the failure to address and decide these issues in a meaningful way deprives Petitioner of due process. If this is sufficient consideration of important legal issues, what would

prevent any circuit court of appeals from summarily declaring any disfavored appeal as "meritless" in an unpublished per curiam? Yet without firm and consistent discipline from this Court, such occurrences are likely to become routine.

In *LaChance v. Erickson*, 522 U.S. 262, 266 (1998) this Court said: "The core of due process is the right to notice and a meaningful opportunity to be heard." *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985).

The opportunity to be heard in this case was neither meaningful nor in compliance with the rules of the Eighth Circuit. At the end of the opinion the Court stated "Accordingly, we affirm. See 8th Cir. R. 47B." **(Appendix at 2)** However, Eighth Circuit Rule 47B provides in pertinent part:

> RULE 47B: AFFIRMANCE OR ENFORCEMENT WITHOUT OPINION
>
> A judgment or order appealed may be affirmed or enforced without opinion **if the court determines an opinion would have no precedential value** *and* any of the following circumstances disposes of the matter submitted to the court for decision:
>
> (1) a judgment of the district court is based on findings of fact that are not clearly erroneous;
>
> (2) the evidence in support of a jury verdict is not insufficient;
>
> (3) the order of an administrative agency is supported by substantial evidence on the record as a whole; or
>
> (4) no error of law appears.

> The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. See 8th Cir. R. 47B"; or "ENFORCED. See 8th Cir. R. 47B."

An opinion addressing the points made on appeal clearly would have had precedential value. At the very least, second and third numbered reasons for granting the writ demonstrate that there were legal issues upon which no direct and binding precedent exists. Before those reasons are addressed, Petitioner will set forth below an encapsulation of the two points on appeal that the Eighth Circuit failed to acknowledge.

B. Petitioner demonstrated that the District Court made a clear error of law in ruling that res judicata barred Petitioner's complaint.

The District Court said that "Plaintiff has raised and lost the issue of the illegality of these taxes not once but several times." **(Appendix at 19)** The District Court is mistaken. Petitioner challenged the Respondents to "Show this Court a single order or judgment in which the challenged taxes, or any of them, were substantively ruled to be legal." Three response briefs were filed, but none of them even tried to meet the challenge.

The Eighth Circuit gave not so much as a hint of consideration to the argument that the complaint below was not frivolous. Petitioner would respectfully urge that this cannot possibly be the meaningful hearing required under *LaChance v. Erickson*, 522 U.S. 262, 266 (1998). However, judicial economy would militate in favor of a remand for a full hearing and published decision before a

properly constituted panel of the Eighth Circuit Court of Appeals. It may not be necessary to devote any judicial resources to this question, if the sanctions are reversed on other grounds.

C. A complaint cannot be judicially barred by *Rooker-Feldman* where the litigant had no opportunity to litigate the issues before a "competent" court.

The District Court actually dismissed the complaint on the grounds of the *Rooker-Feldman* doctrine, derived from *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). **(Appendix at 19)** Petitioner attempted to avail himself of an exception to the rule. In *Lemonds v. St. Louis County*, 222 F.3d 488, 495 (8th Cir. 2000), the Eighth Circuit said:

> Conversely, although the fact that appellants were not parties to the state suit does not automatically preclude a *Rooker-Feldman* bar, we recognize that some courts have declined to apply the rule where the federal plaintiffs lacked a reasonable opportunity, through intervention or otherwise, to litigate their claims in state court. See, e.g., *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 558 (7th Cir. 1999); *Valenti*, 962 F.2d at 296; *Wood v. Orange County*, 715 F.2d 1543, 1546-48 (11th Cir. 1983).

In *Yamaha Motor Corp., U.S.A. v. Riney*, 21 F.3d 793 (8th Cir. 1994) the Eighth Circuit said that a competent tribunal was a necessary predicate for *Younger* abstention, saying:

> [19] A "necessary predicate for a *Younger* dismissal ... is, 'the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved.'" *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 594, 95 S.Ct. 1200, 1203, 43 L.Ed.2d 482 (1975) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 577, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488 (1973)). This requirement for *Younger* abstention, articulated in both *Huffman* and *Gibson*, is a reiteration of the third *Middlesex* requirement.[fn10] Thus, *Huffman* and *Gibson* explain that a district court may not abstain from an exercise of its jurisdiction when the parties lack a competent state tribunal to decide the issues.

The basis for this requirement is the third element of *Younger* abstention, which is "whether there is an adequate opportunity in the state proceedings to raise constitutional challenges." *Yamaha Motor Corp., U.S.A. v. Riney*, 21 F.3d 793 (8th Cir. 1994).

The Eighth Circuit in *Yamaha Motor Corp., U.S.A. v. Riney* declared that *Younger* abstention did not apply because Yamaha Motor Corporation did not have a competent state court tribunal in which to litigate. The Eighth Circuit decided that a litigant is entitled to a tribunal consisting solely of competent jurists (whether one or twenty) and that the availability of appeal was of no consequence.

The question Petitioner sought to present to the Eighth Circuit was as follows. Does the Appellant in this case have a **"*reasonable* opportunity"** to raise his federal claims despite the fact that it cannot be said that he has an **"*adequate* opportunity"** to raise his federal claims in state court for purposes of *Younger* abstention? If

the answer was "yes," Petitioner sought an explanation and analysis of the proper way to differentiate between a "reasonable opportunity" and an "adequate opportunity" for the purposes of *Rooker-Feldman* and *Younger* abstentions.

Respondent Judge Marschewski denied a motion for recusal without a hearing or notice. The Arkansas Supreme Court has explicitly stated that one who requests disqualification of a judge is entitled to a hearing at which he shall have the burden of showing cause for disqualification. In *City of Jacksonville v. Venhaus, Judge*, 302 Ark. 204 (1990), the Court recited the rule as follows:

> [1] In *Westbrook v. State*, 265 Ark. 736, 742, 580 S.W.2d 702, 705 (1979), ***we held that it was error not to hold a hearing on a motion for recusal*** and stated, "[a]lthough the burden was upon the appellant to show cause for disqualification of the presiding judge, ***he could hardly do so without the opportunity to be heard on his motion.***" Due to the chancellor's failure to hold a hearing on recusal or, in the alternative, her failure to recuse, we must reverse.
>
> (Emphases added).

Judge Marschewski was on a UAFS Steering Committee named "Citizens for Our University." Neither UAFS nor Judge Marschewski were interested in admitting this, until Petitioner set forth undeniable evidence of Marschewski's service on this Committee, at the same time he was imposing a separate sanction on behalf of UAFS and the Fort Smith School District. Counsel for UAFS attempted to distance himself from these facts in a state court sur-reply brief filed by UAFS on May 25, 2006, where he said:

> [page 2] I have no idea what the various boards and committees are or their memberships and did not specifically in this instance have knowledge of the membership of the Citizens for Our University ***until after Mr. Stilley filed his Motion to Recall Mandate on April 28, 2006*** and attached various "exhibits" to it.
>
> [page 3] I deny any knowledge ***prior to the present*** that Judge Marschewski was on the Steering Committee.
>
> (Emphases added)

These were not the only issues presented on the appeal, but we must remember the appeal was solely against the sanctions. Whenever it appears that the sanctions cannot stand, it is unnecessary to go any further.

2) Is due process denied when sanctions are imposed sua sponte without notice and opportunity to defend?

In addition to the monetary sanctions to UAFS on the basis of a motion, the District Court sua sponte issued three sanctions, including 1) A requirement that certain lawsuits be pre-approved by the District Court; 2) The dismissal of the civil RICO claim; and 3) A prohibition on the filing of any lawsuits within the Eastern or Western Districts of Arkansas until the $4,125 sanction to UAFS was paid. **(Appendix at 19, 21-23, 31, 32, 34)**

All these sua sponte sanctions were entered without notice or opportunity to defend. This violates FRCP 11 (c)(1)(B), which provides:

> (B) On Court's Initiative. On its own initiative, the court may ***enter an order*** describing

> the ***specific conduct*** that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.
>
> (Emphases added)

No such order was ever entered. The specific conduct thought to be violative of subdivision (b) was never identified, despite a direct, polite, acknowledged request for such findings. **(Appendix at 31)**

Furthermore, with respect to the sua sponte sanctions, Appellant was given no opportunity whatsoever to respond. The notes to Rule 11 provide in pertinent part that:

> The power of the court to act on its own initiative is retained, but with **the condition that this be done through a show cause order. This procedure provides the person with notice and an opportunity to respond.** . . .
>
> (Emphasis added)

Rule 11 and the notes thereafter are consistent with the case law on the subject. In the case of *In re Clark*, 223 F.3d 859, 864 (8th Cir. 2000), the Court said:

> An individual must receive notice and an opportunity to be heard before sanctions may be imposed. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 56-57 (1991); *Jensen v. Federal Land Bank of Omaha*, 882 F.2d 340, 341 (8th Cir. 1989).

Petitioner was denied notice and opportunity to be heard before the imposition of the sua sponte sanctions. Therefore those sanctions are improper.

3) **Is there a right to "safe harbor" under Rule 11 when the motion to dismiss the challenged pleading did not specify whether the dismissal was to be with or without prejudice, when the proposed dismissal did not specify whether the dismissal should be "with prejudice" and where the District Court specifically dismissed the claim "without prejudice?"**

The District Court was completely wrong about the facts relating to Appellant's attempt at "safe harbor." The District Court mistakenly thought that " . . . Plaintiff offered to dismiss UAFS *without* prejudice, *after* UAFS had gone to the time and expense of filing a Rule 11 request with the Court . . . " (Emphases in original) **(Appendix at 30)**

Petitioner moved to dismiss UAFS 2-18-05, which was well within 21 days from the time the motion for sanctions was served on Petitioner. Petitioner's motion was silent on the question as to whether the dismissal should be without prejudice, just as UAFS' Motion to Dismiss dated 2-3-05, as well as UAFS' "Motion for Judgment" of 3-11-05.

Petitioner challenged Respondents to recite any authority to the effect that a motion to dismiss a challenged pleading is ineffectual unless it specifies that the dismissal must be "with prejudice," during briefing at the Eighth Circuit. None of the Respondents had any such authority. If Respondents contend that any such exists at the present time, they should supply same in their responses to this petition.

The District Court called the motion to dismiss, silent as to whether it would be with or without prejudice "too little too late" just a few paragraphs before dismissing the

complaint "without prejudice." **(Appendix at 20, 23)** If this is to be the rule of law in the Eighth Circuit, such a rule must be made by a published opinion. Eighth Circuit Rule 47B does not allow the court to enter unpublished opinions where a serious legal question of first impression is presented.

The District Court was also clearly wrong about the facts of the case. The District Court denied the safe harbor based upon a verifiably incorrect belief that the attempt at safe harbor was filed after the Rule 11 request was filed. As the Court said in *Miller v. Bittner*, 985 F.2d 935 (8th Cir. 1993). "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."

The Eighth Circuit disposed of this issue in an unpublished per curiam despite clear error on the facts and the presence of novel questions of law. Eighth Circuit Rule 47B constitutes no authorization for such acts. Such summary dispositions violate Eighth Circuit Rule 47B as well as the 5th and 14th Amendment constitutional prohibitions on the deprivation of due process.

CONCLUSION

The unpublished per curiam panel decision of the Eighth Circuit constitutes a clear violation of due process. The writ should be granted, and Petitioner should be afforded an opportunity to have his appellate claims heard in a meaningful time and a meaningful manner, with a published decision entered in conformity with applicable rules. Petitioner prays that this Court effectuate this

remedy with the least expenditure of the judicial resources of this august tribunal.

Respectfully submitted,

OSCAR STILLEY, ATTORNEY AT LAW
701 S. 21st Street
Fort Smith, AR 72901
(479) 573.0726 phone
(479) 573.0647 fax
oscar@oscarstilley.com

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2816

Oscar Stilley,

Appellant,

v.

James Marschewski, in his official capacity as Sebastian County Circuit Judge and in his individual capacity; James M. "Mitch" Llewellyn, Jr.; Benny Gooden; Fort Smith Public School District; Jeannie Cole, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, Yvonne Keaton-Martin, each in their official capacity as members of the Fort Smith School Board and in their individual capacities; University of Arkansas at Fort Smith; Robert Brown, Tom Glaze, Donald L. Corbin, Annabelle Clinton Imber, Jim Hannah, Ray Thornton, each in their individual capacity and in their official capacity as a justice of the Arkansas Supreme Court,

Appellees.

* Appeal from
* the United States
* District Court for
* the Western District
* of Arkansas.

[UNPUBLISHED]

(Filed Jul. 24, 2006)

Submitted: May 25, 2006
Filed: May 26, 2006

Before ARNOLD, BYE, and COLLOTON, Circuit Judges.

PER CURIAM.

Attorney Oscar Stilley appeals the district court's[1] imposition of sanctions under Federal Rule of Civil Procedure 11. We find no abuse of discretion in the imposition of Rule 11 sanctions, *See Cooter, Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). We are troubled by Stilley's mischaracterization of the record as to the applicability of Rule 11's safe-harbor provision and Rule 11(c)(1)(B). We reject Stilley's argument that the limitations the district court imposed on his practice constitute attorney discipline, as opposed to Rule 11 sanctions. *See Stilley v. James*, 48 Fed. Appx. 595, 597 (8th Cir. 2002) (unpublished per curiam) (finding no abuse of discretion in applying appropriately fashioned Rule 11 sanctions enjoining Stilley from filing future cases involving issues that had been litigated or raised in three lawsuits and two appeals; court acted appropriately by helping stop Stilley's pursuit of fruitless litigation). Accordingly, we affirm. *See* 8th Cir. R. 47B.

---

[1] The Honorable G. Thomas Eisele, United States District Judge for the Eastern District of Arkansas, sitting by designation in the Western District of Arkansas.

A TRUE COPY OF THE ORIGINAL

MICHAEL E. GANS, CLERK
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BY: /s/ Michael E. Gans

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2816

Oscar Stilley,

Appellant,

v.

James Marschewski, in his official capacity as Sebastian County Circuit Judge and in his individual capacity; James M. "Mitch" Llewellyn, Jr.; Benny Gooden; Fort Smith Public School District; Jeannie Cole, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, Yvonne Keaton-Martin, each in their official capacity as members of the Fort Smith School Board and in their individual capacities; University of Arkansas at Fort Smith; Robert Brown, Tom Glaze, Donald L. Corbin, Annabelle Clinton Imber, Jim Hannah, Ray Thornton, each in their individual capacity and in their official capacity as a justice of the Arkansas Supreme Court,

Appellees.

* Appeal from
* the United States
* District Court for
* the Western District
* of Arkansas.

* [UNPUBLISHED]

* (Filed Jul. 24, 2006)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

(5172-010199)

May 26, 2006

Order Entered in Accordance with Opinion:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit.

A TRUE COPY OF THE ORIGINAL
MICHAEL E. GANS, CLERK
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
BY: /s/ MICHAEL E. GANS

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DISTRICT

OSCAR STILLEY **PLAINTIFF**

v. **NO. CIV-04-2225 GTE**

JAMES MARSCHEWSKI, et al. **DEFENDANT**

MEMORANDUM OPINION AND ORDER OF DISMISSAL

(Filed May 18, 2005)

Numerous motions are pending in this case filed by Mr. Stilley. The substantive motions include the following:

(1) Motion to Dismiss filed by Separate Defendant University of Arkansas at Fort Smith (hereinafter, "UAFS") (Doc. # 6);

(2) Motion to Dismiss filed by Separate Defendants James M. "Mitch" Llewellyn, Jr., Benny Gooden, Jeannie Cole, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, and Yvonne Leaton-Martin (hereinafter, "the School District Defendants") (Docket No. 8);

(3) Motion to Dismiss filed by Separate Defendants James Marschewski, Robert Brown, Tom Glaze, Donald L. Corbin, Annabelle Clinton Imber, and Jim Hannah (hereinafter, the "Judge Defendants") (Docket No. 10);

(4) Motion for Rule 11 Sanctions filed by UAFS (Docket No. 18) and Motion for Judgment to Dismiss Plaintiff's Complaint and to Consider Motion for Rule 11 Sanctions (Docket No. 20). Also pending is Plaintiff's Motion to Voluntarily Dismiss UAFS (Docket No. 16). Because Plaintiff

does not seek a dismissal with prejudice, UAFS requests consideration of its Rule 11 motion.

Plaintiff Oscar Stilley has filed one consolidated response to all five motions filed by the Defendants. In addition to these substantive motions, several housekeeping motions are pending, all of which are summarily disposed of at the conclusion of this Order.

OVERVIEW OF COMPLAINT

This litigation arises primarily from Mr. Stilley's efforts, as counsel for putative class members, in an illegal exaction case by the name of *Parker v. Perry et al.* Originally filed in Sebastian County Circuit Court, Circuit Judge James Marschewski granted summary judgment against Mr. Stilley's clients and assessed sanctions against Mr. Stilley personally. The Arkansas Supreme Court affirmed both the grant of summary judgment and the award of Rule 11 monetary sanctions against Mr. Stilley personally. *Parker v. Perry et al.*, 355 Ark. 97, 131 S.W.2d 338 (2003) (hereinafter, "the *Perry* case").[1] Plaintiff also references or raises claims involving two other state court cases, *Jones v. Double "D" Properties, Inc.* (hereinafter, the "*Double D*" case) and *Stilley v. James* (hereinafter, the "*James*" case). *See Jones v. Double "D" Properties, Inc.*, 2004 WL 907364 (Ark. April 29, 2004); *Jones v. Double* "D"

[1] Detailed accounts of the facts surrounding Mr. Stilley's state court actions giving rise to his claims here may be found in the following decisions: *Jones v. Double "D" Properties, Inc.*, 2004 WL 907364 (Ark. April 29, 2004); *Jones v. Double "D" Properties, Inc.*, 352 Ark. 39, 98 S.W.3d 405 (2003); *Stilley v. James*, 347 Ark.74, 60 S.W.3d 410 (2001); *Stilley v. James*, 346 Ark. 28, 53 S.W.3d 524 (2001); *Stilley v. James*, 345 Ark. 362, 48 S.W.3d 521 (2001).

Properties, Inc., 352 Ark. 39, 98 S.W.3d 405 (2003); *Stilley v. James*, 347 Ark.74, 60 S.W.3d 410 (2001); *Stilley v. James*, 346 Ark. 28, 53 S.W.3d 524 (2001); *Stilley v. James*, 345 Ark. 362, 48 S.W.3d 521 (2001).

Mr. Stilley's claims in this action may be classified by the three categories of Defendants – (1) the Judge Defendants; (2) the School District Defendants and (3) UAFS. UAFS was also named as a separate Defendant in the *Perry* case.

Plaintiff claims that the Judge Defendants denied him a due process right to a competent tribunal to decide the illegal exaction claim presented in the Perry case. He asserts that he "held a considerable interest in the outcome of the case, as a substantial fee would have been awarded if Plaintiffs client had prevailed."[2] (Amended Complaint at ¶ 8). Mr. Stilley further contends that the Arkansas Supreme Court justices had a conflict and were biased because at least by the time of the petition for rehearing in the *Perry* case, other litigation was pending in which Mr. Stilley was pursuing ligation against the justices. For relief, Plaintiff requests that "this Court either decide the claims on the merits, or else enter an order such as to require the pertinent defendants herein to recuse and permit the decision of the relevant claims by a competent tribunal one time in full compliance with the rules of due process." (Amended Complaint at ¶ 13). Plaintiff further claims that he was deprived of equal protection and due process by the Arkansas Supreme

[2] Although the Court need not reach the issue based upon its finding that jurisdiction is lacking, a lawyer does not have a constitutionally protected due process right in a favorable outcome in litigation based on the expectation of a fee.

Court justices when they failed to recuse in the *Perry* case and in the "*Double D*" case. Plaintiff asserts that the justices "were wholly without jurisdiction to decide" the *Parker* case. (Amended Complaint at ¶ 35).

As for his claims against the School District Defendants, Plaintiff alleges they deprived him of his constitutional right to due process and equal protection by attempting to collect the judgment representing Rule 11 sanctions entered by Judge Marschewski in the *Parker* case. Plaintiff asserts that the School District Defendants conspired with Mitch Llewellyn, Jr., an attorney:

> "to use a judgment known to be issued and supported by an incompetent tribunal, to illegally harass, threaten, and pursue plainly and obviously illegal enforcement and collection activities, . . . to make an example of him, and demonstrate that they have no allegiance to the rule of law, and no intention to comply with the rule of law, and every intention to deprive the Plaintiff of competent counsel by conspiratorial conduct, by threats, and by flagrantly illegal harassment."

(Amended Complaint at ¶ 43).

Plaintiff also alleges that the School District Defendants and Judge Marschewski engaged in illegal debt collection procedures in violation of his due process and equal protection rights. For cause, Plaintiff asserts that the school board Defendants failed to officially authorize Mr. Llewellyn, the attorney for the school board, to file a motion to collect the sanctions awarded by Judge Marschewski. Plaintiff further complains that Mr. Llewellyn obtained from Judge Marschewski a judgment requiring Plaintiff "to surrender his entire livelihood, including any

loans, and apparently including any amounts received in trust for the benefit of clients, . . . " (Amended Complaint at ¶ 70). Plaintiff contends the Judgment obtained from Judge Marschewski violated the federal requirement that garnishments not exceed 25% of an individual's aggregate disposable earnings for the week. 15 U.S.C, § 1673(a). He further alleges that the Defendants' conduct violated Ark. Code Ann. § 16-66-215. (Amended Complaint at ¶ 74).

Count 5 of Plaintiff's Complaint alleges illegal debt collection, violation of due process and equal protection as to the Defendant UAFS, contending that UAFS, a party to the *Perry* case, was aware that the sanctions it was attempting to collect had been obtained without due process.

Count 6 of Plaintiff's Complaint alleges that the School District Defendants have violated the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* by causing the Fort Smith Public School District and others to engage in collecting illegal taxes, knowing said taxes to be illegal. Plaintiff contends the Fort Smith Public School District is an "enterprise" within the meaning of RICO and that the School District Defendants engaged in a pattern of racketeering acts by attempting to collect illegal taxes for the School District and by attempting to collect the judgment for sanctions against Mr. Stilley.

Plaintiff seeks the following relief from this Court: an injunction against enforcement of the "Order of the Court" entered by Arkansas Circuit Judge James Marschewski; an injunction prohibiting members of the Arkansas Supreme Court from hearing any appeal, motion, petition, or other legal process whatsoever, involving Oscar Stilley as party or counsel, so long as litigation is pending between

Mr. Stilley and justices of the Arkansas Supreme Court, for an injunction requiring the Arkansas Supreme Court justices to recall the mandate and recuse themselves from the petition for rehearing in *Jones v. Double "D" Properties, Inc.*, Arkansas Supreme Court # 03-1009, and *Parker v. Perry et al.*, Arkansas Supreme Court # 03-261; for an injunction requiring Judge Marschewski to recuse from any case involving Mr. Stilley while any litigation is pending between the two; for compensatory and punitive damages against all named members of the Fort Smith Public School Board, James M. "Mitch" Llewellyn, Jr., the University of Arkansas at Fort Smith, and the Judge Defendants.

LEGAL STANDARD FOR CONSIDERING MOTION TO DISMISS

Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of [the plaintiff's] claim which would entitle [the plaintiff] to relief" *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The Court must take a plaintiff's well-pleaded allegations as true and construe all reasonable inferences in a plaintiff's favor. *Estate of Rosenberg v. Crandell*, 56 F.3d 35, 36-37 (8th Cir. 1995). Thus the issue to be decided by the Court under Rule 12(b)(6) is whether a plaintiff is entitled to present evidence to support his or her claims, not whether a plaintiff will ultimately prevail. *Id.* at 37. While the Court is obligated at this stage of the litigation to assume the facts asserted in the Complaint are true, the court is "free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions

cast in the form of factual allegations." *Wiles v. Capitol Indem. Corp.*, 280 F.3d 868, 870 (8th Cir.2002).

Plaintiff argues in opposing dismissal that matters outside the Complaint should not be considered, or if considered, the motion should be converted into a summary judgment motion. The Court disagrees. "Some materials that are part of the public record or do not contradict the complaint may be considered by a court in deciding a Rule 12(b)(6) motion to dismiss." *Missouri ex rel. Nixon v. Coeur D'alene Tribe*, 164 F.3d 1102, 1107 (8th Cir.), *cert. denied*, 527 U.S. 1039, 119 S.Ct. 2400, 144 L.Ed.2d 799 (1999) (citations omitted). Any pleadings filed and Orders entered in the state court litigation referenced by Plaintiff in his Amended Complaint are matters of public records which may be considered in ruling on the pending motions to dismiss. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999) (district court may consider public records from other proceedings in ruling on a motion to dismiss).

DISCUSSION

1. Related Litigation

This Court recently dismissed a lawsuit raising similar claims in the case of *Robbie R. Jones et al. v. Double "D" Properties, Inc.*, United States District Court for the Western District of Case No. Civ. -04-2220 GTE (hereinafter referred to as "the federal *Double D* case").[3] A copy of that Order, filed April 8, 2005, is attached as

[3] Like the present case, the undersigned was assigned the federal *Double D* case after the judges in the Western District of Arkansas recused.

Exhibit 1 to this Memorandum Opinion and incorporated herein by reference. Much of the same reasoning in that Order applies here.

2. Rejection of Plaintiff's Legal Conclusion

Mr. Stilley, acting as counsel for the Plaintiffs in the federal *Double D* case, named as Defendants some of the same Defendants named in this case, including individual judges of the Arkansas Supreme Court, UAFS and members of the Fort Smith School Board.[4] With respect to the Arkansas Supreme Court judges, Mr. Stilley alleged in the federal *Double D* case that the judges violated his clients' civil rights by refusing to fairly adjudicate their claims, contending that they were motivated by passion and prejudice against Mr. Stilley. This Court dismissed said claims based upon judicial immunity and the *Rooker-Feldman* doctrine. The same analysis applies here and justifies the dismissal of Plaintiff's claims. (See Exh. 1). While the Court might stop here, it will instead elaborate further on the fallacy underlying Plaintiff's theories and expand on the application of the *Rooker-Feldman* doctrine.

First, the Court is obligated to accept Plaintiff's assertions of *fact* as true, but not his legal conclusions. At the heart of Plaintiff's claims is his contention that the Judge Defendants's failure to recuse justifies his collateral attack here on the judgments they rendered. Sprinkled through Plaintiff's twenty-two page Amended Complaint

[4] Although Mr. Stilley was not counsel of record initially, he entered an appearance for the Plaintiffs prior to the action being dismissed. Mr. Stilley also represented the Jones' in the underlying state court action.

are variations of his legal conclusion that the Judge Defendants' failure to recuse in the state court actions rendered them "incompetent" and "without jurisdiction" to continue to preside over the state court cases in question and to render decisions therein. The facts asserted by plaintiff simply do not support Plaintiff's mantra that the state court tribunals which ruled against him were "incompetent." The Court is free to reject this legal conclusion.

Mr. Stilley's controversy with the Arkansas Supreme Court dates back long before the present dispute. For example,[5] in *White v. Priest*, 348 Ark. 783 (2002), Arkansas' highest court rejected Mr. Stilley's request for recusal based on his contention that the justices had demonstrated hostility towards him and had an interest in the case. Mr. Stilley supported his hostility claim by contending that he had lost five previous cases that he otherwise would have won. In refusing to recuse, the Arkansas Supreme Court noted, "[Mr. Stilley's] argument is yet another disingenuous way to again show his dissatisfaction concerning earlier opinions of this court with which he disagrees." *Id.* 348 Ark. at 579. The court further found that "Mr. Stilley's continued strident, disrespectful language used in his pleadings, motions, and arguments, and his repeated refusal to recognize and adhere to precedent" justified striking his entire 70-page brief. *Id.* at 580. The court also referred Mr. Stilley to the Arkansas Professional Conduct Committee. The court in *White* specifically discussed the "Rule of Necessity" as an exception to the

[5] This Court is in no way attempting to chronicle the entire history of Mr. Stilley's dispute with members of the Arkansas judiciary, which appears to be quite extensive.

general rule requiring a judge's disqualification in proceedings in which a judge's impartiality might reasonably be questioned. *Id.* at 575.

Notably, the federal statute governing the disqualification of judges has been interpreted not to require a judge's automatic disqualification whenever he or she is named as a party. *See, e.g., in re Martin-Trigona*, 573 F.Supp. 1237, 1242-43 (D. Conn.1983), *appeal dismissed*, 770 F.2d 157 (2d Cir.1985) ("[I]t is clear that a judge is not disqualified . . . merely because a litigant sues or threatens to sue him."); *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir.1977), *cert. denied*, 435 U.S. 954, 98 S.Ct. 1586, 55 L.Ed.2d 806 (1978) ("A judge is not disqualified because a litigant sues or threatens to sue him.").

A primary reason given for this interpretation is to prevent "judge shopping" by litigants. Otherwise, a plaintiff by simply naming the judges of his choice could automatically disqualify the judges of his choosing. *See Andersen v. Roszkowski*, 681 F.Supp. 1284, 1289 (N.D. Ill.,1988). As the Seventh Circuit has recognized, '"[automatic] recusal benefits the judge who steps aside, and the litigant who sought this outcome, but it may injure the judge who must take over the case and the litigant aggrieved by the substitution."' *Id.* (*quoting New York Housing Development Corp.*, 796 F.2d 976, 981 (7th Cir. 1986)).

The comments of a district court in New York, rejecting a plaintiffs motion to disqualify the presiding judge, are particularly instructive:

> [T]his tactic of suing federal judges and then seeking their disqualification is nothing more than a tactic to delay and frustrate the orderly

> administration of justice, Judges should not be held hostage to this kind of tactic and automatically recuse themselves simply because they or their fellow judges on the court are named defendants in a truly meritless lawsuit. . . . [Section 455] has been repeatedly construed by the courts as not requiring automatic disqualification of a judge in circumstances such as this. . . . Otherwise, § 455 could be used as a vehicle to engage in judge-shopping, and to "manipulate the identity of the decision maker." To let such a motion succeed absent a legally sufficient basis would allow any litigant to thwart the legal process by merely filing a complaint against the judge hearing the case. . . . It is clear that a judge is not disqualified under 28 U.S.C. § 455 merely because a litigant sues him.

Jones v. City of Buffalo, 867 F.Supp. 1155, 1163 (W.D.N.Y. 1994).

While this case law has been developed in the context of the federal statute governing the disqualification of judges, the rationale behind the rule is important here. In this case, Mr. Stilley created – either by his conduct or by his choice to sue state court judges – the alleged conflict he now relies upon as cause for asserting that he was deprived of a competent state court tribunal. This Court declines the invitation to second-guess the Judge Defendants' exercise of their judicial discretion to determine whether a valid conflict existed requiring their recusal.

3. Rooker-Feldman Doctrine

Federal courts are generally required to give full faith and credit to state court judgments. *See* 28 U.S.C. § 1738. Although Plaintiff urges that the state court lacked

jurisdiction when it entered the judgments in question, thereby justifying this Court in disregarding the normally preclusive effect of a state court judgment, the Court has rejected this legal conclusion. The state court Judgments rendered by the Arkansas courts and attacked by Plaintiff here are binding absent a grant of certiorari from the United States Supreme Court or the existence of a statute providing for federal review of the state decision. *See, e.g.*, 28 U.S.C. § 2254.

Because state court decisions may be reviewed at the federal level only by the United States Supreme Court pursuant to 28 U.S.C. § 1257, the lower federal courts lack subject matter jurisdiction to consider federal claims that would vitiate an underlying state court judgment. *Johnson v. City of Shorewood, Minnesota*, 360 F.3d 810, 818 (8th Cir. 2004).

This jurisdictional principle, known as the *Rooker-Feldman* doctrine for the pair of Supreme Court cases from which it derived, applies whenever a federal claim would succeed only "to the extent that the state court wrongly decided the issues before it." *Simes v. Huckabee*, 354 F.3d 823, 827 (8th Cir.2004) *(quoting Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (Marshall, J., concurring)). The *Rooker-Feldman* doctrine deprives lower federal courts of jurisdiction over claims that are "inextricably intertwined" with claims adjudicated in state court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483, 482 n. 16 (1983). A claim is inextricably intertwined with a state court judgment if:

> the federal claim succeeds only to the extent that the state court wrongly decided the issue before it. Where federal relief can only be predicated

> upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

Pennzoil, Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987); *See also Keene Corp. v. Cass*, 908 F.2d 293, 296-97 (8th Cir. 1990); *Hill v. Town of Conway*, 193 F.3d 33, 39-41 (1st Cir. 1999).

The *Rooker-Feldman* doctrine is intended to bar lawsuits in federal district court "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517, 1521-22 (March 30, 2005). Plaintiff's lawsuit epitomizes the situation for which the doctrine was developed.

This Court lacks jurisdiction to command the Arkansas Supreme Court Justices to recall the mandate and to recuse themselves from further proceedings in connection with the *Parker* case or the *Double "D"* case. The Court likewise lacks jurisdiction to command Judge Marschewski to recuse from any legal proceedings involving Mr. Stilley. *See, e.g.,* the Anti-Injunction Act, 28 U.S.C. § 2238. Moreover, to grant Plaintiff the relief he requests against the School District Defendants and UAFS would necessarily require a finding by this Court that Judge Marschewski wrongly sanctioned Plaintiff such that the Defendants erred when they attempted to collect the Judgment. Plaintiff's contention that the School District Defendants acted unlawfully by spending tax receipts is also a collateral attack on the judgments of the Arkansas state courts upholding the collection of said taxes. The Court holds that it lacks jurisdiction to grant the relief

requested by Plaintiff under the *Rooker-Feldman* doctrine. On that basis, each and every claim filed by Plaintiff will be dismissed.[6]

4. Civil RICO Claim

Plaintiff alleges in Count Six that the School District Defendants violated the Racketeer Influences and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961-1968 by causing the Fort Smith Public School District to collect illegal taxes and by then using income from these illegal taxes for the operation of the Fort Smith Public School District. Plaintiff has raised and lost the issue of the illegality of these taxes not once but several times. *Parker v. Perry*, 355 Ark. 97, 131 S.W.3d 338 (2003) (discussing why Mr. Stilley's arguments in support of his clients' illegal exaction claims were barred by principles of res judicata). For Plaintiff to attempt to manufacture a RICO action against the School District Defendants under these facts is disturbing to this Court. The Court expressly finds that this claim in particular is frivolous.[7]

As another district court has noted:

> "RICO should not be construed to give a pleader license to bully and intimidate nor to fire salvos from a loose cannon. Irresponsible or inadequately considered allegations should be met

---

[6] Although not discussed specifically here, many of the alternative grounds stated for dismissal of Plaintiff's claims, such as abstention, would also be legitimate grounds for dismissal. Once the Court concludes that it lacks subject matter jurisdiction, however, its inquiry ends.

[7] By expressly finding that this claim is frivolous, the Court does not mean to suggest that Plaintiff's other claims are *not* frivolous.

> with severe sanctions pursuant to Rule 11 . . . In filing such allegations one may not shoot first and aim later."

Brooks v. Bank of Boulder, 891 F.Supp. 1469, 1477 (D. Col. 1995) (citations omitted).

Sanctions for filing this frivolous claim are discussed below in paragraph 7.

5. UAFS's Rule H Motion and Plaintiff's Motion to Dismiss

After UAFS filed its Motion to Dismiss, Plaintiff filed a Motion to Dismiss UAFS as a Defendant pursuant to Fed. R. Civ. P. Rule 41. UAFS then filed a Motion for Rule 11 Sanctions. Therein, UAFS contends that Mr. Stilley has intentionally rendered himself insolvent in the mistaken belief that it prevents his incarceration for failure to comply with monetary penalties. UAFS urges the Court to impose monetary sanctions and to incarcerate Mr. Stilley until he pays any financial sanctions imposed by this Court. Alternatively, UAFS urges the Court to incarcerate Mr. Stilley to penalize him for his continuing efforts to frustrate the lawful operation of the Courts and to deter continuing conduct by Mr. Stilley and similar conduct by other attorneys. UAFS also requests that this Court refer the matter to the Eighth Circuit Court of Appeals for a review and determination of Mr. Stilley's fitness to practice in its jurisdiction.

The Court agrees with UAFS that Mr. Stilley's request to dismiss UAFS without prejudice, rather than with prejudice, is too little too late to prevent consideration on the merits of UAFS' Rule II request.

The Court further finds that Mr. Stilley violated Fed. R. Civ. P. Rule 11 when he filed an Amended Complaint contending the UAFS violated his civil rights by attempting to collect sanctions that "were obtained without due process." UAFS was a party to the state court action in which Judge Marsehewski entered sanctions against Mr. Stilley. Mr. Stilley had the opportunity to challenge and did challenge the award of sanctions entered against him. Having lost that battle, he then filed suit against UAFS in federal court, contending that UAFS breached federal law, statutory and constitutional, when it attempted to collect the state court judgment. The Court finds it more likely than not that Mr. Stilley sued UAFS "for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. Rule 11(b)(1).

The Court finds an appropriate sanction to be the entry of a Judgment against Mr. Stilley in an amount representing the costs and attorney's fees incurred by UAFS in opposing this case. UAFS is directed to file a Bill of Costs representing said expenses, The Plaintiff will be given an opportunity to respond. Thereafter, the Court will issue its Judgment.

6. Court Imposed Sanctions

In light of the entire record in this case and the other ongoing litigation by Mr. Stilley noted above, the Court can only conclude that Mr. Stilley has pursued, and continues to pursue, this lawsuit for improper purposes. The Court notes that a disciplinary proceeding against Mr. Stilley is pending before the Arkansas Supreme Court Committee on Professional Conduct ("Committee"). This

matter, which arises out of a referral from the Arkansas Supreme Court in *White v. Priest, supra.*, is scheduled for a public hearing in October of 2005.[8] The Court directs that a copy of this Memorandum Opinion and Order of Dismissal he sent forthwith to the Committee to be considered by it as it deems appropriate.

Although this Court has the power to impose monetary sanctions on Mr. Stilley, it appears unlikely, considering the above record, that such sanctions would deter him. *See MHC Inv. Co. v. Racom Corp.*, 323 F.3d 620 (8th Cir. 2003) (affirming $25,000 awarded by district court, *sua sponte*, as a sanction). The Court notes in this regard that UAFS has not been able to collect the sanctions imposed against Mr. Stilley by Judge Marsehewski. UAFS contends that Mr. Stilley has rendered himself insolvent to avoid paying said sanctions.

The Court finds that an appropriate sanction is to limit Mr. Stilley's ability to continue to pursue frivolous litigation. For that purpose, the Court directs the Clerks of the Eastern and Western Districts of Arkansas not to accept for filing any Complaint tendered by Mr. Stilley, either as a lawyer or a litigant, naming as parties any of the individuals or entities identified in Exhibit 2, attached hereto, without said Complaint first being reviewed by this Court. This Court will review any such Complaint proposed by Mr. Stilley to determine whether it appears to raise non-frivolous claims for relief, in which case Mr.

---

[8] The Arkansas Supreme Court referred Mr. Stilley to the Committee on Professional Conduct in May of 2002. It appears likely that Mr. Stilley has been able to postpone action on his disciplinary proceedings in part by filing federal litigation against the Justices of the Arkansas Supreme Court.

Stilley will be permitted to pursue said litigation. The Court finds that this procedure is necessary to stop the frivolous litigation cycle perpetuated by Mr. Stilley. Mr. Stilley is further placed on notice that if he attempts to circumvent this requirement, such as by having others initiate Complaints on his behalf, more serious sanctions will have to be considered.

As a sanction, for filing the frivolous civil RICO claim, that claim is hereby deemed STRICKEN from Plaintiff's Amended Complaint.

CONCLUSION

For the reasons herein stated,

IT IS HEREBY ORDERED THAT Defendants' Motions to Dismiss (Docket Nos. 6, 8, and 10) be, and they are hereby, GRANTED for the reasons herein stated. Plaintiff's Amended Complaint is hereby DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED THAT Plaintiff's Motion to Extend Time to Respond to Motion to Dismiss (Docket No. 12), Plaintiff's Motion for Extension of Time to Respond to Motion for Rule 11 Sanctions (Docket No. 22), Plaintiff's Motion to Supplement Plaintiff's First Amended Complaint (Docket No. 24) be, and they are hereby, GRANTED.

IT IS FURTHER ORDERED THAT the various motions filed by Defendants seeking to strike Plaintiff's consolidated response and a denial of Plaintiff's motion to supplement (Docket Nos. 29, 31, 33, and 35) be, and they are hereby, DENIED.

IT IS FURTHER ORDERED THAT Separate Defendant UAFS' Motion for Rule 11 Sanctions (Doc. No, 18) be, and it is hereby, GRANTED. Separate Defendant UAFS' Motion to Consider its Motion for Rule 11 Sanctions (Doc. No. 20) is hereby GRANTED, UAFS is hereby directed to file a Bill of Costs and Attorneys Fees not later than **May 30, 2005.** Mr. Stilley shall have through and including **June 13, 2005,** to file a brief challenging the amount of sanctions to be awarded. Mr. Stilley shall not be allowed to file any actions against UAFS in federal court until he satisfies said Judgment.

IT IS FURTHER ORDERED THAT the Clerks of the Eastern and Western Districts of Arkansas not accept for filing any Complaint or other pleadings tendered by Mr. Stilley, either as a lawyer or a litigant, naming as parties any of the individuals or entities identified in Exhibit 2, attached hereto, unless said Complaint or other pleadings has first been reviewed by this Court for a determination of whether it will be accepted for filing. As a sanction for filing the frivolous civil RICO claim, that claim is hereby deemed STRICKEN from Plaintiff's Amended Complaint.

IT IS SO ORDERED this 16th day of May, 2005.

/s/ Garnett Thomas Eisele
UNITED STATES
DISTRICT JUDGE

EXHIBIT 1

Individuals and Entities Against Whom Oscar Stilley May Not Initiate Pleadings in United States District Court for the Eastern and Western Districts of Arkansas Without Prior Court Approval

Atkinson, Frank
Cole, Jeannie
Cordell, David
Dawson, Ann
Double "D" Properties, Inc., an Arkansas Corporation
Fort Smith School District, or any of its officials
Fort Smith, the City, or any of its officials
Gooden, Benny
Hathcock, Barbara
Hittner, Rick
Hudson, David
Keaton-Martin, Yvonne
Lewellen, James M. "Mitch"
Murray, Linda
Sebastian County, Arkansas or any of its officials
Stewart, Martha
Thornton, Ray
University of Arkansas at Fort Smith or any of its officials
Wade, Wyman
Wingfield, Gus
Wilcox, Mark

Justices of the Arkansas Supreme Court –

The Honorable W.H. "Dub" Arnold
The Honorable Robert Brown
The Honorable Donald Corbin
The Honorable Betty Dickey
The Honorable Tom Glaze
The Honorable Jim Hannah
The Honorable Annabelle Clinton Imber
Any future Justices

Other Judges –

The Honorable James Marschewski

EXHIBIT 2

Individuals and Entities Against Whom Oscar Stilley May Not Initiate Pleadings in United States District Court for the Eastern and Western Districts of Arkansas Without Prior Court Approval

Atkinson, Frank
Cole, Jeannie
Cordell, David
Dawson, Ann
Double "D" Properties, Inc., an Arkansas Corporation
Fort Smith School District, or any of its officials
Fort Smith, the City, or any of its officials
Gooden, Benny
Hathcock, Barbara
Hittner, Rick
Hudson, David
Keaton-Martin, Yvonne
Lewellen, James M. "Mitch"
Murray, Linda
Sebastian County, Arkansas or any of its officials
Stewart, Martha
Thornton, Ray
University of Arkansas at Fort Smith or any of its officials
Wade, Wyman
Wingfield, Gus
Wilcox, Mark

Justices of the Arkansas Supreme Court –

The Honorable W.H. "Dub" Arnold
The Honorable Robert Brown
The Honorable Donald Corbin
The Honorable Betty Dickey
The Honorable Tom Glaze
The Honorable Jim Hannah
The Honorable Annabelle Clinton Imber
Any future Justices

Other Judges –

The Honorable James Marschewski

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DISTRICT

OSCAR STILLEY **PLAINTIFF,**

v. **NO. CIV-04-2225 GTE**

JAMES MARSCHEWSKI, et al. **DEFENDANT**

ORDER AWARDING COSTS AND CLARIFYING COURT IMPOSED SANCTIONS

(Filed Jul. 8, 2005)

Before the Court is the Bill of Costs filed by Separate Defendant University of Arkansas at Fort Smith (hereinafter, "UAFS") (Doc. # 39). Plaintiff Oscar Stilley has filed a response to the Bill of Costs. Mr. Stilley also seeks clarification of this Court's Order dated May 18, 2005 in which certain restrictions were imposed on Mr. Stilley's future filings against identified individuals and entities. The Court will address both issues separately.

BILL OF COSTS

UAFS seeks an award of $9,069.00, representing the amount of legal fees it would have incurred if the law firm it retained in connection with this proceeding had charged its normal billing rates for the 55 hours of legal work required to defend this matter. In fact, UAFS only incurred charges of $4125.00 because it was billed at a negotiated "pro bono" billing rate of $75.00 per hour. This represents a significant savings from Mr. Maurras and Mr. Kirner's normal rates of $165.00 and $150.00 per hour, respectively.

Mr. Stilley objects to an award of fees over and above that actually incurred by UAFS. The Court agrees that the award of costs in this matter should reimburse UAFS for its actual costs in connection with this lawsuit. While the Court does not doubt UAFS's contention that it has paid out much more than $9,069.00 in unreimbursed legal fees as a result of the numerous frivolous lawsuits filed by Mr. Stilley, the Court is awarding fees for Rule 11 sanctions in connection with this case only. Accordingly, the Court concludes that only those fees actually incurred in connection with this case should be awarded.

Plaintiff does not contest the number of hours submitted up to the date February 18, 2005, when Plaintiff filed his motion to dismiss UAFS. Plaintiff contends that UAFS should not be permitted to recover for fees incurred beyond this point. The Court disagrees. That Plaintiff offered to dismiss UAFS *without* prejudice, *after* UAFS had gone to the time and expense of filing a Rule 11 request with the Court, is insufficient to limit the amount of costs to be awarded UAFS under the totality of the circumstances.

The Court will award costs to UAFS in the sum of $4,125.00, plus post-judgment interest. Said costs are due and payable immediately. Mr. Stilley shall not be permitted to file, as attorney, *any lawsuit* or appear as attorney of record in any case in the Western District of Arkansas unless and until he pays these Rule 11 sanctions in full.[1]

---

[1] This additional condition, which the Court finds is necessary to ensure that Mr. Stilley complies with the Court's imposition of sanctions, is intended to apply to any and all actions in the Western District without regard to the identity of the parties.

CLARIFICATION OF COURT'S MAY 18, 2005 MEMORANDUM OPINION

Mr. Stilley states that he "does not understand the implications of the court's order in this case" and requests that the Court answer certain questions. The Court agrees that it is important to identify with particularity the procedures to be used to enforce the sanctions imposed by the Court pursuant to Rule 11 and the Court's inherent discretion. The procedures identified below, which will be used by both the Eastern and Western Districts of Arkansas, ensure that Mr. Stilley's access to the courts is not restricted unduly. The procedures further provide Mr. Stilley with a mechanism by which he may obtain appellate review of any denial of access to the courts.

The following procedures shall apply anytime Mr. Stilley, either as a party or an attorney, attempts to initiate litigation (in either Arkansas' Eastern or Western District Courts) against any of the persons or entities named in Exhibit 1 hereto.[2]

A. Said Complaint will be not filed with the Clerk, but rather will be immediately forwarded to the undersigned judge for review;

B. The proposed pleading will be reviewed to determine whether the case appears to be frivolous.

C. If it is determined that the proposed lawsuit is frivolous or repetitive, the Complaint will be assigned a miscellaneous case number and assigned directly to the undersigned

[2] The same list is attached as Exhibit 2 to the Court's May 18th Memorandum Opinion.

judge. An explanation will be provided as to why the case was not accepted for filing as a regular ongoing case. Mr. Stilley will then have a record and may pursue whatever appellate procedures he deems appropriate.

D. If it is determined that the proposed lawsuit is not frivolous, the Complaint will be accepted for filing, assigned a regular case number and a judge will be assigned by random draw.

As the Court noted in its May 18th Order, it found that this additional sanction was necessary in order to stop the frivolous litigation cycle perpetuated by Mr. Stilley. The Court further finds that said sanctions must be in place long enough to deter Mr. Stilley, but that said sanctions should not continue in perpetuity. The Court therefore finds that the filing restrictions described herein shall expire automatically on **July 1, 2007**, unless extended prior to that time by the Court.

CONCLUSION

For the reasons herein stated,

IT IS HEREBY ORDERED THAT Defendant University of Arkansas at Fort Smith's Bill of Costs (Docket No. 39) be, and they are hereby, GRANTED. Sanctions payable to Defendant University of Arkansas at Fort Smith in the amount of $4,125.00, plus post-judgment interest accruing from this date forward, are hereby imposed against Plaintiff Oscar Stilley. A separate Judgment is being entered contemporaneously herewith.

IT IS FURTHER ORDERED THAT the Clerks of the Eastern and Western Districts of Arkansas shall not

accept for filing any Complaint or other pleadings tendered by Mr. Stilley, either as a lawyer or a litigant, naming as parties any of the individuals or entities identified in Exhibit 1, attached hereto, but rather, shall utilize the procedures set forth herein at p. 3, paragraphs A through D with respect to said filings. Unless extended by this Court, said filing restrictions shall automatically expire on July 1, 2007.

IT IS SO ORDERED this 30th day of June, 2005.

/s/ Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DISTRICT

OSCAR STILLEY **PLAINTIFF**

v. **NO. CIV-04-2225 GTE**

JAMES MARSCHEWSKI, et al. **DEFENDANT**

JUDGMENT

(Filed Jul. 8, 2005)

Pursuant to this Court's Memorandum Opinion and Order of Dismissal entered on May 18, 2005, and the Court's Order Awarding Costs and Clarifying Court Imposed Sanctions entered this date, it is CONSIDERED, ORDERED AND ADJUDGED that sanctions in the amount of Four Thousand One-Hundred Twenty-Five Dollars ($4,125.00), with post-judgment interest accruing at the rate of 3.4%, be imposed against Plaintiff Oscar Stilley. Said sanctions are due and payable immediately to Defendant University of Arkansas at Fort Smith. As a further sanction, it is hereby CONSIDERED, ORDERED AND ADJUDGED that Oscar Stilley, an attorney and officer of this Court, shall not be permitted to initiate a lawsuit or to enter an appearance in any action pending in the Western District of Arkansas, until he satisfies this Judgment in full.

IT IS SO ORDERED THIS 30th day of June, 2005.

/s/ Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ROBBIE R. JONES, BUCK D. JONES PLAINTIFFS

v. CASE NO. 04-CV-2220 GTE

DOUBLE "D" PROPERTIES, INC., an Arkansas corporation; MARK WILCOX, Commissioner of State Lands, State of Arkansas; MARTHA STEWART, DAVID HUDSON, FRANK ATKINSON, and LINDA MURRY, in their official capacities as Assessor, County Judge, Collector, and Treasurer for Sebastian County, Arkansas; COUNTY OF SEBASTIAN, Arkansas; GUS WINGFIELD, Arkansas State Treasurer; FORT SMITH SCHOOL DISTRICT; JEANNIE COLE, DAVID CORDELL, RICK HITTNER, ANN DAWSON, BARBARA HATHCOCK, WYMAN WADE and YVONNE KEATON-MARTIN, each in their official capacity as members of the Fort Smith School Board and in their individual capacities; JAMES M. "MITCH" LEWELLEN; UNIVERSITY OF ARKANSAS at FORT SMITH; CITY OF FORT SMITH, ARKANSAS; RAY THORNTON, individually; BETTY DICKEY, in her official capacity as a Justice of the Arkansas Supreme Court; ROBERT BROWN, TOM GLAZE, W.H. "Dub" Arnold, DONALD L. CORBIN, ANNABELLE CLINTON IMBER, and JIM HANNAH, each in their individual capacity and in their official capacity as a Justice of the Arkansas Supreme Court, DEFENDANTS

ORDER

(Filed Apr. 8, 2005)

Presently before the Court are various motions to dismiss. The Court will grant these motions and dismiss the Complaint in its entirety.

I. Background

Plaintiffs claim to have owned and lived on certain real property in Fort Smith, Arkansas for forty years.[1] Prior to 1989, this property had an appraised value of $9,880, but after 1989, the property was reappraised at $12,285. From 1996 through 1999, this property was taxed based upon the $12,285 valuation. Plaintiffs failed to pay these taxes and the property was noticed for a forfeiture sale. Defendant Double "D" Properties, Inc. purchased the property in question.

Plaintiff Robbie Jones brought an action in state court against Defendant Double "D" Properties, Inc. and the Arkansas Commissioner of State Lands, Charlie Daniels. Plaintiff alleged that the Commissioner had failed to provide actual notice prior to the tax sale of Plaintiff's property and requested that the resulting deed be cancelled. Plaintiff appealed the unfavorable trial outcome to the Arkansas Supreme Court, which ultimately ruled against Plaintiff in *Robbie Jones v. Double "D" Properties, Inc. & Charlie Daniels,* 352 Ark. 39, 98 S.W.3d 405 (Ark. 2003). Subsequently, Plaintiff sought to file a new complaint against these same defendants, which the trial court refused to permit. Plaintiff again appealed to the Arkansas Supreme Court, which held, *inter alia,* that Plaintiffs recently-raised illegal exaction claim was barred as a compulsory counterclaim. *Robbie Jones v. Double "D" Properties, Inc. & Charlie Daniels*, ___ S.W.3d ___, 2004 WL 907364 (Ark. April 29, 2004).

---

[1] The property in question is specifically identified as: Lots 11 and 12, excluding the eastern twelve feet of Lot 12, in Section 23, Township 8 North, Range 32 West of Fort Smith, Arkansas.

On October 5, 2004, Plaintiffs filed a complaint before this Court, alleging the following claims.

A. Illegal Exaction of Taxes and Improper Tax Sale Claims

Plaintiffs challenge the 1989 reappraisal and the imposition of taxes based upon the reappraised value as illegitimate and violative of Amendment 59 of the Arkansas Constitution.[2] Plaintiffs request an avoidance of the property sale on the grounds that there was no actual notice of the tax sale. Plaintiffs also seek damages from Sebastian County, Arkansas and those state officials whom Plaintiffs claim were involved in the assessment, exaction, and collection of property taxes from the Plaintiffs: the Arkansas Commissioner of State Lands, Mark Wilcox; Sebastian County Assessor, Martha Stewart; Sebastian County Judge, David Hudson; Sebastian County Collector, Frank Atkinson; Sebastian County Treasurer, Linda Murry; and Arkansas State Treasurer, Gus Wingfield.

Plaintiffs claim that the City of Fort Smith, Arkansas and the University of Arkansas at Fort Smith are jointly and severally liable with Sebastian County for repayment of the allegedly illegally exacted taxes. Plaintiffs seek repossession of property from Double "D" Properties, Inc., and damages in the amount of rent for the time Double "D" Properties retained possession.

---

[2] Amendment 59 entitles taxpayers to a roll back of the millage rate when subjected to a ten percent increase in taxable real and personal property in a given year. *See, e.g., Frank v. Barber,* 341 Ark. 577, 583, 20 S.W3d 293, 297 (Ark. 2000).

Additionally, Plaintiffs accuse Sebastian County and its officers of exacting inflated taxes on the taxpayers by implementing multi-year reappraisals of existing property without a complete county-wide reappraisal and Amendment 59 rollback. The Complaint states that Plaintiffs bring this action as a class-action lawsuit for the recovery of damages for all similarly-situated taxpayers of Arkansas.

B. Incompetent Tribunal Claim

Oscar Stilley, Plaintiffs' counsel in the state court lawsuit, had filed an action against Justice Ray Thornton, Justice Betty Dickey, Justice Robert Brown, Justice Tom Glaze, Justice W.H. "Dub" Arnold, Justice Donald L. Corbin, Justice Annabelle Clinton Imber, and Justice Jim Hannah ("Defendant Justices"). Because Mr. Stilley's lawsuit was pending at the time the Defendant justices presided over Plaintiffs' state court appeal, Plaintiffs contend that the Defendant Justices suffered from a conflict of interest. Since the Defendant Justices did not recuse from Plaintiffs' case, Plaintiffs argue that they were deprived of due process and of the right to a "competent tribunal". Plaintiffs request that this Court order the Arkansas Supreme Court to rescind its decisions and order each Justice to recuse himself or herself from the rehearings of *Jones v. Double "D" Properties, Inc.,* Case # 03-1009, and *Parker v. Perry et al,* Case # 03-261.

C. Claims of Fraud and Deprivation of Constitutional Rights

At a Fort Smith School Board meeting held on June 21, 2004, Plaintiffs allegedly informed the School Board

members, Defendants Jeannie Cole, David Cordell, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, and Yvonne Keaton-Martin ("School Board Defendants"), that the Arkansas Supreme Court judgment against Plaintiffs was invalid because it was rendered by an incompetent court. Plaintiffs allege that the School Board Defendants "pursued the fraudulent and dishonest route of refusing to hold any formal vote concerning whether to give credit to said judgment, preferring instead to laughingly comment that they would let their attorney do as he pleased." (Complaint, ¶89). Plaintiffs also claim that:

> Fort Smith School Board Defendants then conspired with others including one James M. "Mitch" Llewellyn, an attorney, and Benny Gooden, the Superintendent of Schools, to use a judgment known to be issued and supported by an incompetent tribunal, to illegally harass and threaten the attorney who brought the original action for illegal exaction, in the class of which Plaintiffs are members, to make an example of him, and demonstrate that they have no allegiance to the rule of law, and no intention to comply with the rule of law, and every intention to deprive the Plaintiffs of competent counsel by conspiratorial conduct, by threats, and by flagrantly illegal harassment.

(Complaint, ¶92, p. 22).

II. Discussion

Each Defendant has filed a motion to dismiss or motion for summary judgment which raise the same three issues – that the Complaint should be dismissed because

of (1) official immunity; (2) the *Rooker-Feldman* doctrine; and (3) *res judicata* and collateral estoppel.

A. Judicial Immunity

The doctrine of absolute immunity for the judicial function has been clearly established:

> As early as 1872, the [United States Supreme Court] recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." For that reason the Court held that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."

Stump v. Sparkman, 435 U.S. 349, 354-55, 98 S.Ct. 1099, 1104 (1978) (citation omitted) *(quoting Bradley v. Fisher,* 13 Wall. 335, 351, 20 L.Ed. 646 (1872)).

There are only two exceptions to the immunity afforded to judges: "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judges judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles v. Waco,* 502 U.S. 9, 11-12, 112 S.Ct, 286, 288 (1991) (citations omitted).

For the first exception, the Court must determine whether Plaintiffs' claims against the Defendant Justices arise from judicial acts. "The relevant cases demonstrate

that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." *Stump,* 435 U.S. at 362, 98 S.Ct. at 1107. Plaintiffs seek relief on the ground that the Defendant Justices failed to recuse themselves. The decision whether to recuse is one that is generally left to the discretion of the individual judge, *see, e.g., Perkins v. Spivey,* 911 F.2d 22, 33. By exercising this discretion, each Defendant Justice was engaged in a function normally performed by a judge. As such acts are judicial in nature, the Court finds this first exception to be inapplicable to the case at bar.

The second exception asks whether the Defendant Justices acted "in the complete absence of all jurisdiction". In making this determination, the Court is guided by the example illustrated by the United States Supreme Court: "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction, and would be immune." *Stump v. Sparkman,* 435 U.S. 349, 357, 98 S.Ct. 1099, 1105 (1978) (citing *Bradley v. Fisher,* 80 U.S. 335, 352 (1871)). Plaintiffs' cases before the Arkansas Supreme Court were appropriately appealed to that court, and the Defendant Justices properly considered the issue of recusal. The Court discerns no basis to support the conclusion that the Defendant Justices acted "in the complete absence of all jurisdiction".

Having determined that neither exception to judicial immunity applies here, the Court finds that Defendants Justice Ray Thornton, Justice Betty Dickey, Justice Robert Brown, Justice Tom Glaze, Justice W.H. "Dub" Arnold, Justice Donald L. Corbin, Justice Annabelle Clinton Imber, and Justice Jim Hannah are immune to Plaintiff's individual capacity lawsuit.

The Court notes that "judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." *Pulliam v. Allen,* 466 U.S. 522, 541-42, 104 S.Ct. 1970, 1981 (1984). Thus, Plaintiffs' request for injunctive relief against the Defendant Justices in their respective, official capacities survives the immunity defense; however, as the Court explains below, Plaintiffs' official capacity claims[3] are barred by the *Rooker-Feldman* doctrine.

B. Qualified Immunity

As members of the Fort Smith School Board, Defendants Jeannie Cole, David Cordell, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, and Yvonne Keaton-Martin ("School Board Defendants") are entitled to raise the defense of qualified immunity against Plaintiffs' suit for damages, *See Wood v. Strickland,* 420 U.S. 308, 95

[3] Any claims for damages against the Defendant Justices in their official capacities is barred by Arkansas' Eleventh Amendment immunity. *See, e.g., Kentucky v. Graham,* 473 U.S. 159, 169, 105 S.Ct. 3099, 3107 (1985) ("This [Eleventh Amendment] bar remains in effect when State officials are sued for damages in their official capacity."). For this reason, the Court considers Plaintiffs' official capacity suit and Plaintiffs' request for injunctive relief to be indistinguishable.

S.Ct. 992, 43 L.Ed.2d 214 (1975); *see also Procunier v. Navarette,* 434 U.S. 555, 98 S.Ct. 855 (1978).

The application of qualified immunity balances two competing interests: "not only the importance of a damages remedy to protect the rights of citizens, but also 'the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority.'" *Harlow v. Fitzgerald,* 457 U.S. 800, 807 102 S.Ct. 2727, 2732 (1982) (citations omitted). The threshold inquiry of the qualified immunity analysis is: "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 2156 (2001).

Assuming the allegations of the Complaint to be true, Plaintiffs claim their constitutional rights were violated when the School Board Defendants: (i) refused to hold a vote to determine whether the Fort Smith School Board should rely upon the judgments issued by the Arkansas Supreme Court; and (ii) used the Arkansas Supreme Court judgments to harass and threaten Plaintiffs and Plaintiffs' attorney. While Plaintiffs feel wronged that a state court judgment, which they consider invalid, was enforced by the Fort Smith School Board, such circumstances fail to amount to a constitutional violation. The School Board could not have properly voted to reject a state court judgment, so the refusal to hold such a vote does not violate any constitutional rights. Accordingly, the Court finds that Defendants Jeannie Cole, David Cordell, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, and Yvonne Keaton-Martin are entitled to qualified immunity against Plaintiffs' constitutional claims. This

immunity defends against Plaintiffs' individual capacity suit for damages, and does not preclude Plaintiffs' official capacity suit nor Plaintiffs' suit for injunctive relief against the Fort Smith School Board.

C. Rooker-Feldman Doctrine

The *Rooker-Feldman* doctrine deprives lower federal courts of jurisdiction over claims that are "inextricably intertwined" with claims adjudicated in state court. *See Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 44 S.Ct. 149 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303 (1983). As explained by the Eighth Circuit Court of Appeals, "the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Keene Corp. v. Cass,* 908 F.2d 293, 296-97 (8th Cir. 1990) (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 1533 (1987) (Marshall, J., concurring)).

Plaintiffs raised their improper tax sale claim and their illegal exaction claim in the state forum, resulting in two appeals before the Arkansas Supreme Court: (1) *Robbie Jones v. Double "D" Properties, Inc. & Charlie Daniels,* 352 Ark. 39, 98 S.W.3d 405 (Ark. 2003) (hereinafter "*Jones I*"); and (2) *Robbie Jones v. Double "D" Properties, Inc. & Charlie Daniels*, ___ S.W.3d ___, 2004 WL 907364 (Ark. April 29, 2004) (hereinafter "*Jones II*").

In *Jones I*, Plaintiff Robbie Jones argued that "the Commissioner had failed to comply with the notice provisions of Act 626 of 1983, as amended, and, therefore, the sale was void and the Commissioner's deed should be cancelled." 352 Ark. at 42, 98 S.W.3d at 406. The Arkansas Supreme Court rejected this argument and held that the Commissioner had complied with the statutory notice requirement. In *Jones II,* the Arkansas Supreme Court upheld the trial court's refusal to permit Plaintiff Jones from filing an amended complaint that raised an illegal-exaction claim:

> In the present ease, the illegal-exaction claim asserted by Appellant Robbie Jones is the same claim previously raised by her husband, Buck Jones. Both claims alleged that the taxes assessed on the Joneses' property were the result of an illegal reappraisal, and that their collection and levy constituted an illegal exaction, in violation of Amendment 59. Both claims also alleged that the amount of taxes actually levied on the Joneses' residence exceeded the product of the legal valuation and the millage rate by approximately $2 per year. Buck's claim was dismissed by the trial court on the ground that it amounted to a compulsory counterclaim that should have been raised at the earliest opportunity. Thus, because Buck did not raise the issue until after the trial court had made its ruling on the merits of the case, his claim was untimely. This court affirmed the trial court's ruling, and that ruling is the law of the case in this matter. Accordingly, the issue is now barred for reconsideration.

Jones II, 2004 WL 907364.

Plaintiffs had the opportunity to fully litigate their tax claims in the state court forum. The Complaint in this case raises substantially similar claims, and some identical claims, as those raised in *Jones I* and *Jones II*. Any consideration of these claims would effect an improper federal review of the two Arkansas Supreme Court decisions, as the Court could not provide relief to the Plaintiffs without first overruling the holdings of those cases, Therefore, the Court finds that the *Rooker-Feldman* doctrine precludes this Court from exercising jurisdiction over Plaintiffs' tax claims here, and the Complaint is dismissed entirely as to Mark Wilcox, Martha Stewart, David Hudson, Frank Atkinson, Linda Murry, Gus Wingfield, Double "D" Properties, Inc., City of Fort Smith, Arkansas, the University of Arkansas at Fort Smith, and Sebastian County, Arkansas. Plaintiffs' request for injunctive relief against Defendant Fort Smith School District is similarly barred by *Rooker-Feldman* as Plaintiffs seek to have Defendant Fort Smith School District permanently enjoined from accepting or expending any taxes upon real property until such time that all persons similarly situated to the Plaintiff's have been repaid the amounts collected under the allegedly improper tax.

The Court also finds that the claims against the Defendant Justices in their respective, official capacities are also barred by the *Rooker-Feldman* doctrine. The Plaintiffs request an order: "for an injunction against Betty Dickey, Robert Brown, Tom Glaze, W.H. 'Dub' Arnold, Donald L. Corbin, Annabelle Clinton Imber, and Jim Hannah, commanding that they recall the mandate and recuse themselves from the petition for rehearing in *Jones v. Double 'D' Properties, Inc.,* Arkansas Supreme Court #03-1009, and *Parker v. Perry, et. al,* Arkansas Supreme

Court #03-261". (Complaint, pp. 25-26). Since the Plaintiff requests the Court to exercise appellate jurisdiction over the Arkansas Supreme Court, the Court must find Plaintiffs' claims against Defendants Justice Ray Thornton, Justice Betty Dickey, Justice Robert Brown, Justice Tom Glaze, Justice W.H. "Dub" Arnold, Justice Donald L. Corbin, Justice Annabelle Clinton Imber, and Justice Jim Hannah in their respective, official capacities to be barred by the *Rooker-Feldman* doctrine.

D. Fort Smith School District Liability

Plaintiffs' official capacity suit against the Defendants Jeannie Cole, David Cordell, Rick Hittner, Ann Dawson, Barbara Hathcock, Wyman Wade, and Yvonne Keaton-Martin ("School Board Defendants") is merely another way of pleading an action against the Fort Smith School District. *Hafer v. Melo,* 502 U.S. 21, 25 112 S.Ct 358, 361 (1991) ("We emphasized that official-capacity suits 'generally represent only another way of pleading an action against an entity of which an officer is an agent' "). For this reason, the Court will treat Plaintiffs' claims against Defendant Fort Smith School Board and the claims against the School Board Defendants in their respective, official capacities as one action against Defendant Fort Smith School District.

Fort Smith School District maintains liability only if the alleged constitutional violations were a product of a policy or custom. *See Monell v. New York Department of Social Services,* 436 U.S. 658, 694, 98 S.Ct. 2018, 2037-38 (1978) ("Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent

official policy, inflicts the injury that the government as an entity is responsible under § 1983.") Additionally, the Eighth Circuit Court of Appeals has held that "[a]t a minimum, a complaint must allege facts which would support the existence of an unconstitutional policy or custom." *Doe ex rel. Doe v. School Dist. of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003).

The Complaint fails to present any circumstances from which the Court may infer that Plaintiffs had suffered a harm from an unconstitutional policy or custom of the School District. This dispute against the Fort Smith School District hinges on the Fort Smith School Board's giving credit to a state court judgment. This Court will not take the position that a policy or custom of giving credit to a state court judgment by Defendant qualifies as a constitutional violation. Therefore, Plaintiffs' claims against Defendant Fort Smith School District fail and shall be dismissed.

E. Res Judicata and Collateral Estoppel

The defense of *res judicata* and collateral estoppel have been raised against Plaintiffs' tax claims. This defense may be applicable to those claims which the Court has determined to be barred by the *Rooker-Feldman* doctrine. However, the doctrine deprives the Court of jurisdiction over those claims, so the Court does not offer any opinion on the merits of these issues or the applicability of *res judicata* and/or collateral estoppel.

F. State Law Claims

Plaintiffs allege, *inter alia,* that they have been harassed and threatened by certain Defendants. Since all

other claims have been dismissed and there remains no federal basis for Plaintiffs' action, the Court declines to exercise supplemental jurisdiction over the remaining state law claims. *See 28 U.S.C. § 1367(c)(3).* Such claims shall therefore be dismissed.

IT IS THEREFORE ORDERED that the Motions to Dismiss (Dkt. #8, 11, 15, 17) be, and are hereby, GRANTED. The Complaint shall be dismissed in its entirety.

Dated this 5th day of April, 2005.

/s/ Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-2816

Oscar Stilley,	*	
	*	
Appellant,	*	Order Denying Petition
vs.	*	for Rehearing and for
James Marschewski, et al.,	*	Rehearing En Banc
	*	
Appellees.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

July 14, 2006

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit